



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 177736

PRELIMINARY RECITALS

Pursuant to a petition filed on November 1, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability regarding Medical Assistance (MA), a hearing was held on December 1, 2016, by telephone.

The issue for determination is whether the agency properly denied the Petitioner's PA request for personal care worker (PCW) services.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is 65 years old and lives with family.

2. Petitioner's primary diagnosis is osteoarthritis. Additional diagnoses include neuropathy, cervical strain, hypertension, kidney disease, limited mobility and chronic back pain. Functional limitations include endurance, ambulation, dyspnea with minimal exertion, falls and unsteady gait, limited mobility, vision impairment. She uses a walker and shower chair and has orthotics, back brace and knee brace. She is oriented but forgetful, depressed, agitated and requires redirection for safety.
3. On April 1, 2015, a Long Term Care Functional Screen (LTCFS) was completed for the Petitioner. The screener noted the Petitioner did not meet any Target Group definitions. It was noted that the Petitioner did not have any functional limitations that restricted her ability to perform normal daily tasks or threatened her capacity to live independently. She did not have any cognitive diagnoses or deficits and no mental illness diagnoses to interfere with activities of daily living. It was also noted that she lived with an elderly individual with dementia and the Petitioner provided personal care and supportive homecare to the individual. The Petitioner was found to be independent with all activities of daily living and instrumental activities of daily living except for driving (she did not have a valid driver's license).
4. On March 17, 2016, the Petitioner had a visit with a nephrologist for chronic kidney disease. She was noted to be "doing well." She reported previous leg edema but the edema had resolved. No respiratory distress was noted. She reported recent abdominal pain. An EGD showed polyps and she was scheduled to have a colonoscopy. She was reported to move all extremities. The reviews of other systems were all negative.
5. On August 2, 2016, a personal care screening tool (PCST) was completed for the Petitioner. The assessor noted the Petitioner had the following needs:
 - Bathing – Level D – needs assistance with washing, in/out of tub due to limited ROM, generalized weakness, pain, unsteady gait
 - Dressing – upper – Level D – needs assistance to pull shirt overhead; unable to reach arms above head due to cervical strain
 - Dressing – lower – Level D – needs assistance to pull up pants and to put on socks and shoes; unable to bend forward related to cervical strain, neuropathy
 - Braces – yes – wears back, ankle and knee brace – needs assistance 2x/day
 - Grooming – Level E – needs assistance with oral care, hair care, skin care, shaving and nail care
 - Eating – Level C – 3x/day – needs assistance with cutting up foods, preparing meals, ensuring diet compliance; due to neuropathy, cervical strain, mobility and motor limitations
 - Mobility – Level D – unable to stand prolonged periods, uses back brace and cane; PCW provides stand-by assistance
 - Toileting – Level D – requires assistance with pulling clothing up/down and with pericare – 3x/day
 - Transferring – Level D – requires assistance with transfer from bed to chair, chair to bed, bed to toilet
 - Medication Assistance – Level B – needs reminder 2x/day
 - Complex Positioning – 2x/day

Behaviors – yes – neuropathic pain, cervical strain, osteoarthritis, Petitioner requires rest periods or analgesic to relieve arthritis pain and stiffness; uses a warming blanket to manage arthritis pain

Medical conditions – yes – cervical strain, neuropathy, osteoarthritis, limited joint mobility, wears orthotics, chronic pain, joint instability and limitations may impede care times

6. On August 7, 2016, the agency received a PA request from the Petitioner's provider, [REDACTED], for 126 units/week (31.5 hours/week) of PCW services with a start date of August 4, 2016.
7. On September 12, 2016, the PA was returned to the provider with a request for the personal care addendum, last 3 primary care physician clinic notes and nephrology notes. On October 4, 2016, a second message was sent to the provider requesting clarification of the PCST. The provider returned a revised PCST reflecting the need for 100 units/week (25 hours/week) and a statement that the member had changed since the last encounter. In the revised PCST, the request for services for complex positioning, behaviors and medical conditions were removed. The Petitioner's provider also submitted an active problems list for the Petitioner from ICHHC Family Medicine. It noted the following active problems: esophageal reflux (onset 2015), rhinitis (onset 2015), back pain (onset 8/1/2016), shoulder pain (onset 8/1/2016), GI infection (onset 5/24/2016), chronic kidney disease (onset 2014), cervical strain (only entry is 8/1/2014), trigeminal neuralgia (onset 2014, managed with carbamazepine), hypertension (onset 2014), osteoarthritis (onset 2014).
8. On October 20, 2016, the agency issued a notice to the Petitioner that her PA request was denied.
9. On November 1, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Personal care services are “medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community.” Wis. Admin. Code §DHS 107.112(1)(a). Covered services include the following:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities, or one-fourth when the recipient lives with family. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

To determine the numbers of PCW hours, providers are required by the DHCAA to use the Personal Care Screening Tool (PCST), a tool meant to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the DHCAA's reviewer can then adjust to account for variables missing from the screening tool's calculations.

In this case, the agency asserts that the documentation submitted with the Petitioner's PA request does not support the Petitioner's need for 25 hours/week of PCW services. It noted that a LTCFS found, in 2015, that the Petitioner was independent with all activities of daily living. The only medical documentation submitted to support the PA was the note from the nephrologist in March, 2016 and a list of current, open diagnoses from the Petitioner's family clinic. The agency further noted that the Petitioner was listed as a caregiver in the LTCFS.

At the hearing, the Petitioner testified that she is no longer a caregiver and that she moved into her son's house. She indicated that she has problems with her knees, ankles and back. She stated that she is receiving PT for her shoulder. She also testified that she has problems with walking and swelling in her legs. She also testified that she had surgery for her kidney and stomach problems.

While the Petitioner appears to have a complex medical history, I must concur with the agency that there is insufficient documentation presented with the PA request to conclude that the Petitioner requires PCW assistance. The only medical note submitted was from March, 2016 and it did not note any problems that would prevent the Petitioner from performing activities of daily living. The list of active problems is not sufficient to explain the limitations caused by the various diagnoses. Many of the problems have onset dates of 2014. There are no records submitted to support that there have been changes in the conditions between the LTCFS and the PCST. Further, the more recent active problems of back and shoulder pain have no medical notes to support the extent of any limitation. No PT records were submitted.

If the Petitioner has had a change in condition that reflects the need for PCW services, a new PA request may be submitted with appropriate documentation to support her need. At this time, I conclude there is insufficient information submitted and the agency correctly denied the PA request.

CONCLUSIONS OF LAW

The agency correctly denied the Petitioner's PA request for PCW services.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

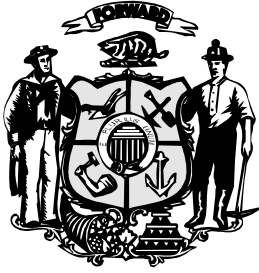
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of January, 2017

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 23, 2017.

Division of Health Care Access and Accountability